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REMARKS

The last Office Action, which has been made final, and the references cited by the Examiner have been carefully considered. The claims have been amended in a sincere effort to define more clearly and more specifically features of applicant's invention which distinguish over the art of record and to place this application in proper form for appeal and/or allowance.

Initially, applicant respectfully requests a two-month extension of time to respond to the Office Action. A check in the amount of \$225.00 is enclosed herewith; however, please charge any deficiency or credit any overpayment for the extension fee to Deposit Account No. 502335.

Applicant acknowledges and gratefully appreciates the Examiner's entry of the amendments to the claims to overcome their rejection on formal grounds. In this latest Office Action, Claims 51-65 have again been rejected in view of the references of record. More specifically, Claims 51-53 and 56-65 have again been rejected under 35 U.S.C. 103(a) as being unpatentable over the Savage patent (U.S. Patent No. 6,026,372) in view of the Walker et al. patent (U.S. Patent No. 6,298,331). Applicant acknowledges the Examiner's withdrawal of the rejection of the claims based solely on the Savage patent under 35 U.S.C. 102(e). Claims 54 and 55 remain rejected under 35 U.S.C. 103(a) as being unpatentable over the Savage patent in view of the Walker et al. patent, as applied to Claim 51, and further in view of the Koether patent (U.S. Patent No. 5,875,430).

The Examiner's comments under the heading "Response to Arguments" on pages 4 and 5 of the Office Action are acknowledged and gratefully appreciated. In response to those comments, certain of the claims have been amended.

More specifically, the Examiner comments that, with respect to Claims 58 and 59, the claims do not recite that the activity level is a "current" activity level. As such, Claims 58 and 59, as well as Claims 60, 61 and 62, have been amended to more specifically define the invention as being where the storage location has associated therewith a "current" activity level corresponding to a rate of sale of the prepared food product (amended Claim 58); the

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pan fill level changing as a function of the "current" activity level (amended Claim 58); the "current" activity level being stored in the memory (amended Claim 59); the "current" activity level changing in response to activation of the activity level switch (amended Claim 60); the "current" activity level is changed in response to at least one of a time, a day and an event (amended Claim 61); and the "current" activity level being displayed on the activity level display (amended Claim 62).

The Savage patent does not disclose a storage location for food product which has associated therewith a current activity level corresponding to a rate of sale of the prepared food product, nor does it disclose a pan fill level that changes as a function of the current activity level. The Savage computer system merely monitors the quantity of food products sold, but not the rate of sale (the current activity level).

The Walker et al. automated kitchen apparatus merely measures the elapsed time since a start signal indicating that a food product is available to sell was received, and determining the time of expiration. No current activity level corresponding to a rate of sale of the prepared food product is disclosed in the Walker et al. patent. As such, it is respectfully urged that the combination of the Savage and Walker et al. patents do not teach or suggest the invention defined by Claims 58-62, each of which has now been amended to recite that the activity level is a "current" activity level.

The Examiner's comments with respect to Claims 60 and 61 on page 5 of the Office Action are also acknowledged and gratefully appreciated. The Examiner commented that the limitation of "changing the activity level without loading new data" is not found in either Claim 60 or Claim 61. Accordingly, Claim 60 has now been amended to recite that the "current" activity level changes in response to activation of the activity level switch "and without the need to load new data". Similarly, Claim 61 has been amended to define that the "current" activity level is changed in response to at least one of a time, a day and an event and "without the need to load new data". The Savage patent does not disclose an activity level switch which provides for a method of changing the activity level without loading new data. The Savage patent states to change activity levels, the data must be updated. The activity switch defined by Claims 60 and 61, as now more specifically amended, changes the

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percentage of the sales up or down according to the requirement, and does not require loading new data to change the activity level.

The Walker et al. patent does not disclose an activity level switch. Claim 60 provides a switch and a method of changing the activity level without the need to load new data. Such is not disclosed in the Walker et al. patent, as the Walker et al. method and apparatus are directed to discounting food when the food product is about to be discarded, and has nothing to do with an activity level as defined by the claims herein. There is no disclosure in the Walker et al. patent of an activity level, which is defined as corresponding to a rate of sale of the prepared food product. There is also no disclosure in the Walker et al. patent of an activity level changing in response to at least one of a time, a day and an event and without the need to load new data, as now more specifically defined by amended Claim 61.

Accordingly, it is respectfully urged that Claim 60 and 61, as now more specifically amended, patentably distinguish over the combination of the Savage and Walker et al. patents and are allowable.

The rejection of Claims 51-53 and 56-65 under 35 U.S.C. 103(a) in view of the combination of the Savage and Walker et al. patents is, again, respectfully traversed. The comments of the Examiner on page 5 of the Office Action concerning applicant's arguments submitted in his previous reply are very helpful and appreciated.

In particular, the Examiner contends that "applicant argues that claim 51 is improperly rejected because Walker does not show a timer associated with the storage location timing the aging of the items and providing a third indication upon their expiration". The Examiner points to Figure 10A, items 238 and 244 for apparently showing a timer. It is respectfully submitted that applicant did not argue that the Walker et al. patent does not show a timer that times the aging of items and providing an indication upon their expiration. In fact, on page 20 of the Reply to Office Action filed on May 31, 2005, applicant acknowledges that the Walker et al. patent discloses the conventional use of product timers in the food industry. However, the Walker et al. patent does not disclose a food product status switch associated with a storage location and a food product status indicator associated with the storage location, where the food product status indicator may be in one of three different

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states. More specifically, as defined by Claim 51, the food product status indicator has: 1) a first state which indicates that the prepared food product is stored at the associated storage location; 2) a second state which indicates that the prepared food is not stored at the associated storage location; and 3) a third state which indicates that the storage time exceeds an acceptable food product hold time. These states may be indicated by various colors, such as green, red and yellow. Nowhere in the specification of the Walker et al. patent is a food product status indicator disclosed which is changeable into three states. In fact, Claim 52 calls for the food product status indicator associated with the storage location to change to a fourth state, such as by a flashing light. The automated kitchen apparatus and the POS terminal of the Walker et al. patent do not include a food product status indicator which has three states, as defined by Claim 51, and a fourth state, as defined by Claim 52, to indicate that cooking of the replenishment food product should commence.

Furthermore, with respect to Claim 52, the Walker et al. patent does not disclose a cook start time which is equal to the difference between the acceptable food product hold time and the time required to cook the replenishment food product. Such structure defined by Claims 51 and 52 is simply not disclosed in Walker et al. And, as previously pointed out in applicant's reply to the first office action, the Savage patent does not disclose anywhere in the patent, a food product status indicator associated with the storage location coupled to a processing circuit capable of showing first, second and third states associated with an occupied storage location and an unoccupied storage location, as defined by Claim 51, or capable of showing a fourth state, as defined by Claim 52. The Savage patent does not even mention holding food or food timers, or food to discard because of expired hold time. The Savage patent just monitors the number of food items sold based on signals from the cash registers 11, and instructs the cook to cook more. No hold times to determine the quality of the food already cooked are entered into the system.

Try as he may, applicant cannot see how the Savage and Walker et al. patents, alone or in combination, suggests the invention defined by Claims 51-53 and 56-65, and in combination with the Koether patent, Claims 54 and 55.

With respect to Claims 56 and 57, the Examiner kindly comments on page 5 of the Office Action that he believes that the Savage patent shows a pan fill level display

comprising displays 12 and 15. The Savage patent has again been carefully reviewed, and items 12 and 15 are a cooking station monitor and a manager's station monitor, respectively. However, it is respectfully urged that, just because the Savage patent discloses displays, this does not mean that they are pan fill level displays as specifically defined by Claims 56 and 57. In fact, they are not. The Savage patent does not disclose a system where product is held, and the product hold times are measured. The Savage computerized system merely relies on the look-up table and the signals from the electronic cash register to determine how much to cook (please see the flow chart of Figure 3 of the Savage patent). Claim 56 specifically calls for a pan fill level display that indicates a quantity of the prepared food product to cook in response to the state of the food product status indicator changing from the first state to the second state. Such is not disclosed in the Savage patent, because the Savage computerized system just uses a look-up table and signals from the electronic cash register to determine how much to cook. As such, it is respectfully urged that Claims 57 and 58 patentably distinguish over the Savage and Walker et al. patents, alone or in combination, and are allowable.

The Examiner's comments with respect to Claims 58 and 59 on page 5 of the Office Action are appreciated. The Examiner contends that the activity level corresponding to sales is embedded in the system database of Savage and that, as periods of historically increasing sales are approached, the "pan fill level" changes accordingly. But, it should be noted here that Claim 58, and Claims 59-62 which depend directly from Claim 58, call for an activity level that corresponds to a "rate of sale". The Savage computer system monitors quantity of food products sold, but not the "rate of sale", as specifically defined by amended Claim 58. Accordingly, it is respectfully urged that Claim 58 and Claims 59-62, which depend therefrom, patentably distinguish over the Savage patent and the Walker et al. patent, alone or in combination, and are allowable.

With respect to Claims 54 and 55, applicant further wishes to point out that the Koether patent relates to a bi-directional communication network for use in a kitchen or a restaurant to effect a change in a recipe for a particular food product, but does not disclose an active switch which is associated with a "storage" location, nor does it disclose a food product status indicator which has a seventh state which indicates that the storage location is

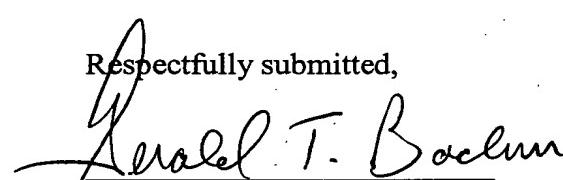
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not being used. The Koether patent also does not disclose that the state of the food product status indicator changes to the seventh state in response to activation of the active switch. These features are also not taught or suggested by either the Savage patent or the Walker et al. patent. Accordingly, it is respectfully urged that Claims 54 and 55 patentably distinguish over the combination of the Savage patent, the Walker et al. patent and the Koether patent, and are allowable.

The remaining claims, i.e., Claims 61-65, depend directly or indirectly from Claim 51. They are, therefore, respectfully urged to patentably distinguish over the references of records for the same reasons submitted with respect to Claim 51.

In view of the foregoing remarks, entry of the amendments to Claims 58-62, reconsideration of Claims 51-57, amended Claims 58-62 and Claims 63-65, and allowance of the application with Claims 51-65 are respectfully solicited. If the Examiner has any questions or helpful comments which would expedite the prosecution of this application to a favorable conclusion, he is respectfully requested to contact the undersigned attorney at the telephone number given below. It is respectfully urged that the amendments made herein do not require a further search, and no new matter has been added to any of the claims. The amendments are made only to place this application in proper form for allowance or appeal.

Respectfully submitted,


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